

without depriving equity of the ability to exercise its jurisdiction *in personam* on grounds of conscience. *In the instant case the defendant could have shown an indefeasible title had he sold Lot 3660, a step which he could not take* because he undertook to the court not to: the court could have granted an injunction against sale, and that could scarcely have been described as an order inconsistent with his indefeasible title. If the registered proprietor were a trustee, his indefeasible title would not have precluded intervention by the court in execution of the trust: under the then Land Code there was no express provision for registration as trustee. The indefeasible title would not preclude an order for specific performance of a contract for sale by the proprietor. All these are instances of equity acting *in personam*, and indeed the order in the instant case may be described as an order *in personam* that the registered proprietor should defeat his own title." (emphasis mine)

Oh Hiam v. Tham Kong⁽⁴⁾ clearly relates to a situation where, in the words of Professor Visu Sinnadurai in *The Sale and Purchase of Real Property in Malaysia* (1984), "the courts have said that they would not allow the registered proprietor to seek protection under the indefeasibility provisions so as to deprive them of exercising their equitable jurisdiction in granting relief to a plaintiff against the registered proprietor in a claim brought against the registered proprietor *in personam*." In other words, the courts have intervened in contractual relationships between parties in order "to prevent registered proprietors from avoiding the 'conscientious obligations' entered into by the parties." The unconscionable conduct, as I see it, has been that of the three ladies and not that of the nine defendants and, as there is no contractual relationship between the nine defendants and Ismail, the principle in *Oh Hiam v. Tham Kong*⁽⁴⁾ cannot, in my view, possibly apply. Nor can I see how the principle can be extended on grounds of conscience against the nine defendants for no fault of theirs but that of a third party, the Assistant Collector, in a situation where no privity exists. The answer, I therefore find, to the question posed by issue no. 4 in the circumstances of the instant proceedings must be in the negative. In the event, issue no. 5 calls for no consideration. However, if as between Ismail and the nine defendants the equity jurisdiction could somehow be invoked, I am of the view, having regard to the fact that the nine defendants purchased the said interest "in good faith and for valuable consideration" and in complete ignorance of Ismail's agreement with the three ladies, that they have a better claim than Ismail because they have actually paid the full purchase price, obtained registration of the said interest in their respective names expeditiously and gone into possession of the land: *Ng Kheng Yeow v. Chia Ah Foo & Ors.*⁽¹⁰⁾ In the result, I declare that Ismail is not the beneficial owner of

A the said interest and find that the three ladies, Mayah, Siti and Rafeah, are liable to him for breach of contract, the damages for which are to be assessed.

B In respect of costs, since the suit brought by Ismail against the nine defendants is in the nature of a test case, I make an order for both parties to bear their own costs. As regards Ismail's suit against the three ladies, I award costs against them.

C The injunction originally granted against Haji Yahya and the eight other defendants is hereby discharged.

Order accordingly.

D Solicitors: Sidek, Zubir, Sulaiman, Nadzir & Partners; Nordin Torji & Yussof Ahmad.

E **Re ROSHIDI BIN MOHAMED**

[O.Cr.J. (Mohamed Arif J.) 14 & 25 May 1987]

[Kangar – Criminal Application No. 54-02-1987]

F *Constitutional Law – Habeas corpus – Application for – Order of detention made by magistrate under section 6 of the Drugs Dependents (Treatment and Rehabilitation) Act 1983 – No notes of proceedings recorded – Whether magistrate had complied with requirements of law – Drugs Dependents (Treatment and Rehabilitation) Act 1983, s. 6 – Federal Constitution, Arts. 5 & 151(1)(a).*

G The detainee had been detained by an order of the learned magistrate under section 6 of the Drugs Dependents (Treatment and Rehabilitation) Act 1983. The detainee had been arrested by the police on suspicion of being a drug dependant and had been taken to the General Hospital where he was examined by a medical officer. The learned magistrate subsequently ordered him to be detained under section 6(1)(a) of the Act. It was contended in this case that the learned magistrate had not complied with the mandatory provisions of the Act in that she had failed to make any record on whether she had complied with the various sub-sections of section 6, namely, sub-sections (1), (3), (4) and (5).

I **Held:** in this case, in the absence of the record of proceedings kept by the learned magistrate, it was impossible to hold that the mandatory requirements of the law had been complied with and therefore the application must be granted and a writ of *habeas corpus* issued.

[Editorial Note: The appeal to the Supreme Court was heard by Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Wan Hamzah S.C.JJ. and dismissed on 12 October 1987.]

Cases referred to:

- (1) *Kuso Sah v. State of Bihar* A.I.R. 1974 S.C. 156 (folld).
- (2) *Supramaniam v. Kanthasamy* [1956] M.L.J. 18 (refd).
- (3) *R. v. Architects' Registration Tribunal* [1945] 2 All E.R. 131 (refd).
- (4) *Singah Mohamed Hussin v. Public Prosecutor* [1973] 2 M.L.J. 109 (refd).
- (5) *Mahmood Ali v. Public Prosecutor* [1964] M.L.J. 57 (refd).
- (6) *Hari Ram Seghal v. Public Prosecutor* [1981] 1 M.L.J. 165 (refd).
- (7) *Loh Kheng Meah v. Public Prosecutor* [1970] 1 M.L.J. 11 (refd).
- (8) *Greene v. Secretary of State for Home Affairs* [1942] A.C. 284 (refd).
- (9) *Chua Han Mow v. Superintendent of Pudu Prison* [1979] 2 M.L.J. 70; [1980] 1 M.L.J. 219 (refd).
- (10) *Shaari v. Public Prosecutor* [1963] M.L.J. 22 (refd).
- (11) *Chua Sek Leng v. R.* [1953] M.L.J. 25 (refd).

CRIMINAL APPLICATION.

Manjit Singh for the applicant.

Noraini bt. Abdul Rahman (Senior Federal Counsel); *Zulkifli bin Bakar* (Federal Counsel) with him for the respondent.

Cur. Adv. Vult.

Mohamed Ariff J.: This was an application for *habeas corpus* at the instance of Roseniati binti Mahmud, the detainee's wife, in which the Senior Federal Counsel Cik Noraini bt. Abd. Rahman appears for the respondent and Mr. Manjit Singh for the applicant/detainee with Encik Zulkifli bin Bakar assisting Cik Noraini in the capacity of a Federal Counsel.

The very brief facts of the case show that one Roshidi bin Mohamad was detained pursuant to a detention order dated 11 November 1986 issued at the instance of the Kangar magistrate under section 6 of the Drugs Dependents (Treatment and Rehabilitation) Act 1983 at Serenti Rehabilitation Centre, Sungai Petani. He was arrested according to the affidavit of Police Sgt. Yahya bin Nordin on 6 November 1986 at 10.00 a.m. on suspicion of being a drug dependant at Batu Satu, Jalan Pauh, Arau, Perlis. He was then taken from his house to Arau Police Station and later to the General Hospital, Kangar where he was examined by Dr. Mohd Nazri bin Sulaiman. He was first produced before the magistrate on 6 November 1986 who made an order under section 4(1)(b) of the Drugs Dependents (Treatment and Rehabili-

ation) Act 1983 and was ordered to be detained till 20 November 1986 at Kangar Police Station for the purpose of undergoing tests pursuant to section 3(2) of the said Act. Five (5) days later, on 11 November 1986, he was again produced before the same magistrate at Kangar whereby the magistrate ordered him to be detained under section 6(1)(a) of the said Act.

It was the contention of counsel for the applicant that the learned magistrate, when making the detention order on 11 November 1986, did not comply with the mandatory provisions of the Drugs Dependents (Treatment and Rehabilitation) Act 1983 in that she had failed to make any record on whether or not she had complied with the various sub-sections of section 6, namely, sub-sections (1), (3), (4) and (5) particularly in the absence of any evidence to show that the detainee had been given an opportunity to make representations. As such, it was argued by the applicant that the continued detention of the detainee was illegal. Accordingly, she applied for *habeas corpus* to be issued for the release of her husband, the detainee.

In reply, the Senior Federal Counsel for the respondent asserted that the magistrate had complied with the provisions of the various sub-sections in that she had considered the report of the medical officer, the report of the rehabilitation officer and gave the detainee an opportunity to make representations as stated in para 3 of the magistrate's affidavit (enclosure 8) dated 20 April 1987. It was further argued that despite being asked by the magistrate whether the detainee has anything to say, he replied that he did not want to attend the rehabilitation centre as he was undergoing traditional treatment to cure himself. In addition, he was newly married and that he had a business to take care of. It was alleged that the detainee had in fact been given an opportunity to rebut the content of the medical report if he wishes to do so. And if he had wanted to engage a lawyer the detainee should have informed the magistrate of his intention. As he did not say so, the detainee had failed to take up the opportunity when he told the magistrate that he did not wish to attend the rehabilitation centre as he was undergoing traditional treatment to cure himself and that he was newly married and had a business to take care of.

It was further argued by the Senior Federal Counsel that the magistrate's order was not fatal on the ground that no notes of proceeding were re-

corded. Failure to take down notes of proceeding by the Kangar magistrate did not invalidate the detention order she subsequently made though it would have been better to take down the record of the proceeding.

In the course of the application, both sides submitted authorities to illustrate whether non-compliance with statutory requirements in section 6(1), (3), (4) and (5) is fatal or not to the respondent's case. According to the Senior Federal Counsel, her failure to comply with the statutory provisions would not vitiate any proceedings if there had been no miscarriage of justice, and that her failure to take note of the proceeding could be cured by section 422 of the Criminal Procedure Code.

In support of his argument, counsel for the applicant cited the following cases:

(a) *Kuso Sah v. State of Bihar*⁽¹⁾ (Chandrachud J.) where it is stated:

"The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised."

(b) *Supramaniam v. Kanthasamy*⁽²⁾ in which it was held:

"The courts have frequently laid down that upon a plea of guilty the magistrate must either take evidence or a statement of the facts and record them and as this was not done in this case the conviction must be quashed."

(c) *R. v. Architects' Registration Tribunal*⁽⁵⁾ in which it is held:

"It was not sufficient that the applicant was merely asked to explain certain information contained in such documents. Since the applicant was, therefore, not given a real and effective opportunity of meeting relevant allegations made against him, the motion to quash the decision of the tribunal must succeed."

(d) *Singah Mohamed Hussin v. Public Prosecutor*⁽⁴⁾ in which it was held:

"The omission by the learned magistrate to read and explain the amended charges to the appellant was an irregularity which was not curable by section 422 of the Criminal Procedure Code as it was contrary to a statutory requirement."

(e) *Mahmood Ali v. Public Prosecutor*⁽⁵⁾ which held:

"There should be a record to show that the accused was asked to plead on all three counts and his plea in respect of

each count. There should also be a record to the effect that the learned President has ascertained that the appellant understood the nature and consequences of his plea in respect of each charge and he intended to admit without qualification each offence alleged against him."

(f) *Hari Ram Seghal v. Public Prosecutor*⁽⁶⁾ in which it was held:

"The object of these provisions is to correct any miscarriage of justice arising not only from error in judgment and procedure but from neglect or indolence on the part of those in authority and resulting in undeserved hardship on any individual affected by such judgment, neglect or indolence ...

Any mistake or flaw in that machinery, which may have the possibility of injustice, must be resolved in their favour."

(g) *Loh Kheng Meah & Ors. v. Public Prosecutor*⁽⁷⁾

To counter the applicant's argument, the Senior Federal Counsel cited the following cases:

(a) *Greene v. Secretary of State for Home Affairs*⁽⁸⁾ in which it was held:

"A mistake on the part of the advisory committee, to whom the appellant made objection against the detention order under para (3) of reg. 18B, in failing to give the appellant, pursuant to para (5) of the regulation, the correct reason for his detention, did not invalidate the order for detention."

(b) *Chua Han Mow v. Superintendent of Pudu Prison*⁽⁹⁾ in which it was held:

"Although the wrong form of warrant had been used, the mistake was curable under the provisions of the Criminal Procedure Code."

(c) *Shaari v. Public Prosecutor*⁽¹⁰⁾ in which it was held:

"Although the learned magistrate had failed to explain the main points of the evidence against the appellant, he (the appellant) was able in his defence to give an intelligent reply; therefore, having regard to what had taken place subsequent to that the accused had not been prejudiced in his defence, the failure to comply with the provisions of section 257 of the Criminal Procedure Code had not occasioned any prejudice or a reasonable probability of prejudice but was an omission curable under section 422 of the Code."

(d) *Chua Sek Leng v. R.*⁽¹¹⁾ in which it was held:

"The learned magistrate was wrong in that he did not comply with section 265 of the Criminal Procedure Code which requires a magistrate to record the questions asked as well as the replies thereto; in this case the failure to write down the questions and answers in no way prejudiced the appellant and was therefore a mere irregularity curable under section 448 of the Code."

Having listened to both sides' arguments and given them ample opportunity to air their respective views as well as examined the various authorities cited by both sides, I am more than convinced that this is a case in which the magistrate had been indolent in not having complied strictly with the statutory requirements, namely, sub-sections (1), (3), (4) and (5) of section 6 of the Drugs Dependents (Treatment and Rehabilitation) Act 1983 which are conditions precedent to be strictly complied with by a magistrate before making an order to detain a person suspected to be a drug dependant under section 6(1)(a) or 6(1)(b) of the said Act. The fact that she stated in her affidavit (enclosure 3) dated 20 April 1987, para 5 that she had in fact asked the detainee Roshidi bin Mohamed whether he would like to make representations or to say anything as regards the report of Dr. Mohd. Nazri bin Sulaiman and the contents of the report of the rehabilitation officer did not at all convince me in the absence of her record of proceedings which she should have no difficulty in taking down in the course of the proceedings as she needed to do before making the order. Her written affidavit at the highest is only her own written words that she had already complied with the conditions precedent in sub-section (1), (3), (4) and (5) of section 6 of the said Act. The very words of the detainee that he did not want to attend the rehabilitation centre as he was undergoing traditional treatment to cure himself and that he was newly married and that he had a business to take care, as stated in para 5 of the learned magistrate affidavit, *per se* should have been construed as a mark of protest and not of unwillingness to make representations. It was therefore up to the magistrate to make him appreciate the meaning and the significance of making representations. I am of the view that the magistrate had not fully appreciated the purport and significance and meaning of the words "giving" a would-be detainee "an opportunity to make representations" as she herself did not have the experience to fully understand its purpose in relation to a would-be detainee without trial. Had she fully appreciated it and understood the significance and purpose of making representations as provided in section 6(1) of the Drugs Dependents (Treatment and Rehabilitation) Act 1983 she would, could and should have explained its purpose, in the same way one would have attached importance on the requirement to explain to an accused the charge against him, and the consequences of the three alternatives when the defence is called in any criminal trial or when an amended charge is to be read and explained with all its meaning and the consequences of the

A plea to an accused in the criminal trial. Assuming she has done so, it would have been reflected in the record of proceeding which she did not have. So one is left in doubt as to what actually transpired at the proceeding in the absence of any record. If she had done so, the would-be detainee would have properly understood the purpose and significance of making representations. Having appreciated it, he might even have decided to engage counsel or seek the aid of the Legal Aid Bureau to represent his case if its meaning had been made clear to him. His reaction would have been in the record of the magistrate's proceeding for all to see especially if this record has been annexed to her affidavit (enclosure 8) to form an exhibit.

It is also doubtful whether a copy of the report of the rehabilitation officer had been supplied to the detainee as required by sub-section (3) of section 6. Otherwise, she would have stated it in her affidavit. This was not done. Furthermore the fact that she had done it could have been verified from her own record of proceeding of which she had none, let alone annexed it to her affidavit as an exhibit. There is also no record to show that in making the order for detention, the learned magistrate have had any regard to the circumstances spelt out in sub-section (4) of section 6. Otherwise it would have been spelt out in her record of proceeding, if there was any, for all to see.

Thus despite the supporting affidavit of the rehabilitation officer (enclosure 16) dated 4 May 1987, particularly paras 2, 3 and 5, a further affidavit of Inspector Hassan (enclosure 15) dated 4 May 1987, paras 3, 4 and 5, a further affidavit of Inspector Hassan (enclosure 10) dated April 26, 1987, in particular paras 3 and 4, the affidavit of Dr. Mohd Nazri bin Sulaiman (enclosure 9) dated 20 April 1987, para 3, the affidavit of Arthur Jeyaratnam Jebaratnam, a medical laboratory technologist attached to the pathologist laboratory (enclosure 6) dated 20 April 1987, are all of no avail in the absence of the learned magistrate's own record of proceeding that she had truly complied with the prerequisites for making a detention order as required under sub-sections (1), (3), (4) and (5) of section 6.

It was argued by the Senior Federal Counsel that non-recording of the proceeding is tantamount only to irregularity which could be cured under section 422 of the Criminal Procedure Code. That may be so provided such irregularity has not occasioned a failure of justice. But in this case, the failure to comply with section 6(1) in particular

had touched the very root and substance of justice (which could not be cured) rather than its form which could have been cured under section 422 of the Criminal Procedure Code. The failure on the part of the magistrate to record the facts of the proceeding that she has done so left the court in doubt as to what had actually transpired at the proceedings presided over by the magistrate. It would not therefore be unjustified to draw an adverse inference in favour of the detainee that the magistrate had not in fact given the detainee an opportunity to make representations.

In passing, I am of the view that in the final analysis the learned magistrate has failed to appreciate the true significance, purport, meaning, content and spirit of the words "giving" a would-be detainee without trial "an opportunity to make representations". As such it could be construed that she had taken this condition precedent in subsection (1) of section 6 somewhat lightly. Assuming she had given "an opportunity to make representations" the importance which is attached to this condition precedent, it would have been easily and clearly reflected in her record of proceeding, if she had any. Indeed by way of analogy I took pains in explaining in the course of delivering judgment in court the significance of giving a would-be detainee an opportunity to make representations pursuant to Article 151(1)(a) of the Federal Constitution, sections 4(4), 5(1) & (3), 6(1) & (2) of the Emergency (Public Order and Prevention of Crimes) Ordinance 1969, section 9(1) & (3) of the Dangerous Drugs (Special Preventive Measures) Act 1985, sections 11(1)-(3), 12(1) & (2) of the Internal Security Act 1960, and similarly the significance of section 6(1) of the Drugs Dependants (Treatment and Rehabilitation) Act 1983 which, like the above-mentioned Acts and Ordinances, should not be belittled since under them suspects are to be detained for rehabilitation or preventive detention, as the case may be, without trial. Indeed, under the Emergency (Public Order and Prevention of Crimes) Ordinance 1969 and the Internal Security Act 1960, elaborate procedures are provided pursuant to the Internal Security (Advisory Board Detained Persons) Rules 1964 and the Public Order and Prevention of Crimes (Procedure) Rules 1972 for making representations. There should also be similar rules for making representations for the Dangerous Drugs (Special Preventive Measures) Act 1985, and of the Drugs Dependants (Treatment and Rehabilitation) Act 1983 as in the case of the Acts and Ordinances mentioned above, since both Acts contain provisions for giving an opportunity to a

A would-be detainee to make representations as they are special laws for detaining persons without trial. If there were any such rules framed by the Minister, the learned magistrate should have resorted to it and at least indicated that she had made every effort to check the existence of such rules and comply with the provisions of the rules (if any) for making representations. As she could not be said to have fully understood the significance and purpose attached to "giving an opportunity to make representations" to a would-be detainee, as the learned magistrate did not seem to refer to them, or do any checking, something she could not have thought of, let alone refer to it or ask for the rules, her failure to comply with the requirement of section 6(1) of the Act is of no surprise. If she had done what she ought to do, it would have been reflected in her record of proceedings. As there was none, we are left in the realm of conjecture.

I note in passing that the definition of drug dependants has a very wide scope before a person can be said to fall under that category. Before one can truly say that one is a drug dependant, it would seem that a certain amount of observation must be carried out on him, and there must be appearance or symptoms of "psychic and sometimes physical state which is characterized by behavioural and other responses including the compulsion to take drugs on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence". All of which would have manifested themselves upon observations or reflected in the medical report which should not simply rely upon the positive result of one urine test produced by the doctor on urine sample alleged to be taken from the detainee (not apparently by the doctor himself) but rather by a laboratory technologist. Besides, the medical report has only this to say: "Saya telah mengesah bahawa saya telah memeriksa penama Roshidi bin Mohamed No. K.P. A 0613390 pada 6 November 1986 dan dengan ini memperakui bahawa orang tersebut ialah seorang penagih dadah dalam erti section 2, Akta Penagih Dadah (Rawatan dan Pemulihan) 1983." Indeed paras 2 and 3 of the medical officer's affidavit (enclosure 9) clearly indicated that he only took the detainee's medical history and did a physical examination on him and caused the urine test to be done. On 10 November 1986, upon receipt of the report stating that the urine of the detainee contained morphine, he certified that the detainee was a drug dependant within the meaning of the Drugs Dependants (Treatment and Rehabilitation) Act 1983. Obviously, there is nothing

in his report to indicate that he had made a thorough observation on the detainee over a certain period to detect the symptoms on the detainee before certifying that he fell within the category of drug dependants within the meaning of the definition in section 2 of the Act. His report is so bare and did not give any account of the result of his observation over a period to indicate the symptoms he had detected while making observation. It would appear that based solely on the positive urine test of urine sample alleged to be taken from the would-be detainee, the medical officer decided to certify that the detainee is a drug dependant within the meaning of section 2 of the Act. This is insufficient for the purpose of the definition of a drug dependant in my view.

As this is a case of detention without trial, in which "the power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised" (Chandrachud J. in *Kuso Sah v. State of Bihar*⁽¹⁾), I feel the more justified in coming to the decision as I did having regard also to Article 5 particularly clauses (2) and (3) of the same article of the Federal Constitution and section 6(1)(a) of the Drugs Dependents (Treatment and Rehabilitation) Act 1983 to grant the applicant's application and order a writ of *habeas corpus* to be issued.

Order accordingly.

Solicitors: *Manjit Singh & Co.*

**PUBLIC PROSECUTOR v. DATO KEE
YONG WEE & ORS.**

PUBLIC PROSECUTOR v. KOH KIM SWEE

[O.Cr.J. (K.C. Vohrah J.) 9 July 1987]

[Kuala Lumpur – Federal Territory Criminal Applications
Nos. 14, 14A & 15 of 1987]

Criminal Procedure – Transmission of criminal case from a Sessions Court to High Court – Whether expedient for the ends of justice – Whether questions of law of unusual complexity would arise during the course of trial – Whether provisions empowering transfer of cases to High Court obsolete – Criminal breach of trust and abetment of criminal breach of trust – Criminal Procedure Code (F.M.S. Cap. 6), s. 417.

A *Banking – Production of bank statements and accounts – Only a High Court judge may make an order to compel disclosure by bank officers – Application may be made before trial begins or when trial is proceeding – Banking Act 1973, s. 36(2) – Bankers' Books (Evidence) Act 1949, s. 6.*

B The accused were charged with committing criminal breach of trust, an offence punishable under section 409 of the Penal Code (F.M.S. Cap. 45) and with abetment thereof, an offence punishable under sections 109 and 409. The Public Prosecutor made three applications for orders under section 417(2) of the Criminal Procedure Code (F.M.S. Cap. 6) that the trial of all three cases be transferred from the Sessions Court to the High Court under section 417(1)(cc). The main ground relied upon by the Deputy Public Prosecutor for the transfer was that such order was expedient for the ends of justice having regard to section 6 of the Bankers' Books (Evidence) Act 1949 read with section 36(2) of the Banking Act 1973. It was agreed that as the prosecution would seek to admit bank statements in respect of the charges and that if objections were to be made under section 36 of the Banking Act 1973 by "account holders in a bank" as regards these statements, the Sessions Court could not compel officers of the banks concerned to produce these statements or accounts as section 6 of the Bankers' Books (Evidence) Act 1949 only allowed a High Court judge to compel their production. It was also agreed that the joint trial of all three cases would take a considerable length of time and that it was unlikely that the parties would get a continuous hearing at one stretch in the Sessions Court. The other ground relied upon for the transfer was that it was likely that there would arise some questions of law of unusual complexity during the course of the trial.

F Held, dismissing the application: (1) for all practical intents and purposes, section 417(b) of the Criminal Procedure Code has fallen into desuetude and obsolescence for transfer of cases to the High Court. For the provisions of section 417(1)(b) to be successfully invoked today, the case must be an extraordinary one. It was extremely difficult to see any question of law of unusual complexity arising in the course of trial which the judicial officers of the Sessions Court could not competently deal with. **G** Having regard to their legal qualifications, considerable experience and professional competence, these judicial officers are legally qualified and experienced to deal with intricate points of law. In any case, no attempt was made to show what the questions of law of unusual difficulty would be in the cases which were the subject matter of the applications;

H (2) there was no necessity for the original books of the bank and their entries to be produced for the purpose of the trial. Since copies of the relevant entries needed for the trial were already available to the Public Prosecutor and as Bank Negara had given its requisite consent for such disclosure, then provided the requisite procedures spelt out in sections 3, 4 and 5 of the Bankers' Books (Evidence) Act 1949 were complied with, these copies may be received at the trial of cases as *prima facie* evidence of the entries and of related matters, transactions and accounts stated therein;

I (3) although only a High Court may make an order in terms of section 6 of the Bankers' Books (Evidence) Act 1949, nevertheless the application for such an order can well be made before any High Court judge before the